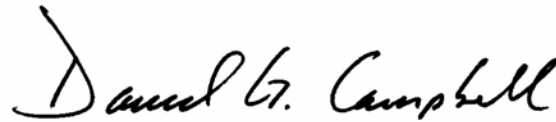


1 Fed. R. Civ. P. 15(a). Because a motion to dismiss is not a “responsive pleading” within the
2 meaning of the rule, *see Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393,
3 1401 (9th Cir. 1986), Plaintiff does not need leave of Court to file his proposed amended
4 complaint. *See* Dkt. #13. The Clerk will be directed to file the lodged proposed amended
5 complaint. In light of the filing of the amended complaint, the motion to dismiss the original
6 complaint will be denied as moot.

7 **IT IS ORDERED:**

- 8 1. Plaintiff’s motion for leave to amend complaint (Dkt. #12) is **denied** as moot.
- 9 2. The Clerk is directed to filed the proposed lodged amended complaint
10 (Dkt. #13).
- 11 3. The motion to dismiss the original complaint (Dkt. #8) is **denied** as moot.

12 DATED this 6th day of February, 2009.

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David G. Campbell
United States District Judge
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